

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal No. 1:05cr46-1

TERRY LYNN EVERETT,  
Defendant.

**ORDER/OPINION**

On the 2<sup>nd</sup> day of February 2006, came the defendant, Terry Lynn Everett, in person and by his counsel, Rhonda M. McIntyre, and also came the United States by its Assistant United States Attorney, Shawn Angus Morgan, pursuant to a Petition for Action on Conditions of Pretrial Release filed in this case on December 30, 2005, alleging defendant:

- 1) Violated Condition No. 1 of his Conditions of Pretrial Release that he refrain from any use or unlawful possession of a narcotic drug or other controlled substances, unless prescribed by a licensed medical practitioner.

The grounds for the above allegation are as follows:

As directed by the Court, following the defendant's plea hearing on December 13, 2005, the defendant furnished a urine specimen. The urine specimen tested positive for cocaine in a presumptive drug test. The urine specimen was forwarded to Scientific Testing Laboratories (STL) requesting confirmation testing for cocaine. On December 17, 2005, the urine specimen was certified by STL, in a confirmation test, as being positive for cocaine . . . .

Prior to the drug test on December 13, 2005, the defendant was interviewed for the Presentence Report. During the interview, he admitted to having used crack cocaine that past Sunday. He indicated that he took only one small hit. He was upset and said he was a failure for having used, indicating that he told himself he was never

going to use crack again. Following the defendant's admittance and the presumptive positive drug test result for cocaine on December 13, 2005, this officer advised the Court immediately by telephone. The Court decided to allow the defendant to remain on bond, indicating that it would address the matter when the confirmation test is returned from the lab. This officer advised the defendant of the Court's decision, and briefed his attorney, who had come into the probation office to transport the defendant back to his home, concerning the positive drug test result and the court's decision.

It is noted that the defendant previously tested positive for cocaine on June 7, 2005, at which time the Court directed the defendant to participate in an inpatient drug treatment program in addition to his outpatient counseling with Jack Torsney. The defendant was admitted to the ACT Unit inpatient substance abuse treatment program on September 2, 2005, and successfully discharged on September 30, 2005. Since his discharge, he has continued counseling with Jack Torsney, and two drug tests were negative, until the positive result, to which the defendant has admitted, as set forth in this petition.

Prior to the taking of evidence, counsel for Defendant waived the preliminary hearing, conceding probable cause existed to forward this revocation matter to Chief United States District Judge Irene M. Keeley for hearing and disposition.

Upon consideration of all which, the Court finds there is probable cause to believe that the defendant violated the condition of his pretrial release as alleged in the Petition for Action on Conditions of Pretrial Release filed December 30, 2005.

It is therefore **ORDERED** that the defendant be bound over for a full hearing before the Honorable Irene M. Keeley, Chief United States District Judge for the Northern District of West Virginia on the violation alleged in the Petition for Action on Conditions of Pretrial Release filed December 30, 2005.

Defendant moved the court to permit him to remain on release pending the full hearing before the District Judge. For reasons stated on the record, Defendant's motion for release is **DENIED**.

It is therefore **ORDERED** that Defendant be remanded to the custody of the United States Marshal pending further proceedings herein.

The clerk of the court is directed to send a copy of this order to counsel of record.

DATED: February 2<sup>nd</sup>, 2006

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE